

UNITED STATES
v.
MERLE I. ZWEIFEL ET AL.

IBLA 74-155

Decided June 26, 1974

Appeal from decision of Administrative Law Judge Dent D. Dalby in Wyoming Contests 28032 and 28429 declaring appellants' 1/ association placer mining claims null and void.

Affirmed.

Mining Claims: Discovery

A discovery on one claim does not validate a group of claims for a mining claimant must show a discovery of a valuable, locatable mineral deposit within the limits of each claim.

Mining Claims: Discovery–Mining Claims: Location– Rules of Practice: Evidence

Where a mining claimant testifies that he performed no work of excavation or improvement on the claims, took samples at random which he could not tie to any particular claim, had the samples assayed but introduced into evidence no assay certificates, offered no persuasive evidence as to marketability, and where his testimony leaves the impression that he was never on many

1/ Besides Zweifel, the following persons were listed as appellants in the Notice of Appeal filed October 30, 1973: Walter H. Burkhardt, Martha Baxter, Dee Bunning, Hazel M. Childs, Margaret Pierce, and Gladys Spector. Appellants Baxter, Bunning, Childs, Pierce and Spector did on September 8, 1972, file copies of deeds quitclaiming their interests in the claims to Dr. Burkhardt. It is therefore questionable whether they are entitled to appeal as adversely affected parties under 43 CFR 4.410.

of the claims, it is reasonable to conclude that no discovery was made on any of the claims.

Administrative Procedure: Burden of Proof--Mining Claims: Contests--Mining Claims: Discovery: Generally--Rules of Practice: Evidence

In a mining contest after the Government has carried its burden of establishing a prima facie case that there has been no discovery of a valuable mineral deposit, the claimant is required to prove by a preponderance of the evidence that his claim is valid.

Administrative Procedure: Generally--Constitutional Law --Mining Claims: Contests--Rules of Practice: Government Contests

A mining claimant is not denied due process merely because of prehearing publicity where he fails to show that there was any unfairness in the contest proceeding itself.

APPEARANCES: Clement Theodore Cooper, Esq., Washington, D.C., for appellants; Albert V. Witham, Office of the Regional Solicitor, Department of the Interior, Denver, Colorado, for the Government.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Merle I. Zweifel and certain co-locators appeal from an October 15, 1973, Administrative Law Judge decision rendered after a hearing consolidating 24 Wyoming contests, declaring the mining claims null and void. Contests W-28032 and W-28429 involve the Ruby Placer Mining Claims 1 through 24 and 29 through 36 and the Bear Placer Mining Claims 1 through 24 and 27 through 34.

The October 15, 1973, decision declared invalid 1,583 placer mining claims on approximately 253,000 acres of national resource land in Wyoming.

On similar facts, the Board ruled on two appeals of Zweifel and his co-locators; United States v. Zweifel, 11 IBLA 53, 80 I.D. 323 (1973), involving 2,910 placer mining claims in Colorado and United States v. Anderson, 15 IBLA 123 (1974), involving 102 placer mining claims in Wyoming. In both cases, the Board ruled all claims null and void.

In the contests herein on appeal, the Judge ruled the claims null and void for the following reasons:

1. No discovery of a valuable, locatable mineral deposit.
2. Failure to locate in compliance with mining laws.
3. Failure to perform annual assessment work.

In the interest of brevity, this decision is confined to a consideration of lack of discovery as a ground for invalidity.

As to the Zweifel method of operation, insofar as it is essentially the same as that described in United States v. Zweifel, supra, the Board incorporates herein its discussion in the 1973 Zweifel decision.

A mining claimant must show a discovery of a valuable mineral deposit within the limits of each claim; a discovery on one claim cannot serve to validate a group of claims. Zweifel, supra.

At the hearing herein, Zweifel was called as a Government witness and stated that he located the claims. He also testified that he performed no work of excavation or improvement on the claims, took samples at random which he could not tie to any particular claim, and had the samples assayed. He did not introduce the assay certificates into evidence. He offered no persuasive evidence as to marketability, and his testimony left the impression that he was never on many of the claims. The Administrative Law Judge rightly concluded from that evidence and the testimony of other witnesses that no discovery of any valuable, locatable mineral had been made on any claim.

Appellants argue that the United States did not sustain its burden of proof in presentation of its prima facie case. The law as to burden of proof is well settled, as discussed in Zweifel, supra, at 88:

[T]he Government has the burden of establishing a prima facie case that the mining claim is invalid. The claimant then must prove by a preponderance of evidence that his claim is valid. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). * * * United States v. Harper, 8 IBLA 357 (1972); United States v. Taylor, 8 IBLA 264 (1972); United States v. Bass, 6 IBLA 113 (1972) * * * Converse v. Udall, supra [399 F.2d 616, 621 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969)]; United States v. Toole, F. Supp. 440 (1963).

Appellants also assert that Government witnesses who examined the claims failed to follow established guidelines for field examination of unpatented mining claims. This issue also was raised in Zweifel, supra, and the Board responded to it at 89:

Appellants overlook the fact that such standards are merely general guidelines and do not have the force and effect of statutes or regulations. There is no requirement that such guidelines be followed. Whether or not they were followed is not the essential issue. It is, rather, whether or not the Government established a prima facie case that the claims are invalid.

The Board finds that at the hearing the Government did establish a prima facie case of lack of discovery of any locatable mineral by the testimony of the Government witnesses, including Zweifel. The prima facie case having been established, appellants had the burden of proving as to each claim that there was a discovery of a valuable mineral deposit. Appellants have failed to produce persuasive evidence meeting this requirement as to any mineral on any claim. As in the 1973 Zweifel case, the Board is most doubtful that Zweifel or any co-locator was ever physically present on the majority of the claims listed in the consolidated contest.

Appellants further contend that adverse news publicity regarding the locator-agent of the co-locators and the validity of unpatented mining claims rendered a fair hearing impossible at the administrative level. As in Zweifel, supra, although appellants made general allegations of adverse prehearing publicity, they have failed to present any persuasive evidence that there was unfairness in the contest proceeding itself. See United States v. Gumm, 7 IBLA 237, 246, 79 I.D. 588, 592 (1972).

Appellants' other arguments have been reviewed but do not establish validity of the claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

I concur.

Douglas E. Henriques
Administrative Judge

I concur in the result.

Frederick Fishman
Administrative Judge

